

1 GLENN S. LEON
2 Chief, Fraud Section
3 Criminal Division, U.S. Department of Justice
THEODORE M. KNELLER
4 Trial Attorney, Fraud Section
Criminal Division, U.S. Department of Justice
D.C. Bar No. 978680
1400 New York Avenue, NW
5 Washington, DC 20530
Telephone: (202) 514-5799
6 E-mail: Theodore.Kneller@usdoj.gov

7 *Attorneys for the United States*

8 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

9
10 UNITED STATES OF AMERICA,
Plaintiff,
11 v.
12 DAVID LEE KAGEL,
Defendant.

Case No. 2:24-cr-00024-GMN-DJA
**Government's Sentencing
Memorandum**

14
15 David Kagel is a fraudster and a serial liar. Over the course of a 56-year legal
16 career, he abused his position of trust. Kagel violated his oath to conduct himself with
17 integrity and to faithfully discharge his duties as a lawyer. He shamefully used his position
18 as an attorney to dupe and defraud trusting victims of their life savings. He did it for one
19 reason: *greed*.

20 On May 24, 2024, Kagel pleaded guilty to one count of conspiracy in violation of
21 18 U.S.C. § 371 for conspiring to execute a multi-year, multimillion dollar cryptocurrency
22 Ponzi scheme. The Presentence Report correctly calculates Kagel's guideline offense level
23 to be 31. (ECF 28 at ¶ 88, hereinafter "PSR.") Thus, Kagel's imprisonment guideline
24 range is 108 to 135 months, which is capped by a 60-month statutory maximum sentence.

(PSR at ¶ 114.) Kagel is 86 years old, and he claims to be in ailing health. Notwithstanding his age and health, the Court should impose a sentence that adequately addresses the seriousness of his crimes, which have inflicted life-altering financial damage and immense emotional anguish on his victims. Based on defendant's age and reported failing health, (both being factors indicative of a low likelihood of recidivism), the government agrees with the U.S. Probation Office's (USPO) recommendation to impose a below guidelines sentence of 5 years' probation. (PSR at ¶ 166.) But in consideration of the seriousness of the offense, the government recommends the Court also require home confinement (unmonitored) as a condition of probation. Home confinement is also consistent with the PSR's recommendation. (*See* PSR at ¶ 165; "Although the egregious actions of this defendant should not be minimized or understated, an alternative form of punishment, such as ... home confinement, might be equally efficient and less costly than incarceration.")

I. RELEVANT PROCEDURAL HISTORY

On June 28, 2023, the government charged defendant in the Central District of California by information with one count of conspiracy to commit commodity fraud, in violation of 18 U.S.C. § 371. *United States v. Kagel*, 2:22-cr-00276-DSF, Dkt. 1 (C.D. Cal. June 28, 2023). The parties simultaneously filed a plea agreement to resolve the sole conspiracy charge. *Id.* at Dkt. 6. Separately, a twelve-count superseding indictment for the same scheme is pending in the Central District of California against defendant's coconspirators, David Saffron and Vincent Mazzotta. *United States v. Saffron, et al.*, 2:22-cr-276-DSF, Dkt. 101 (C.D. Cal. Dec. 7, 2023).

On January 30, 2024, defendant, the U.S. Attorney for the Central District of California, and the U.S. Attorney for the District of Nevada consented to transfer and

1 dispose of defendant's case by guilty plea in this District pursuant to Rule 20 of the Federal
 2 Rules of Criminal Procedure. (ECF 1.) On May 28, 2024, defendant entered a plea of
 3 guilty at a hearing before this Court. (ECF 24.) Defendant is not in custody and is currently
 4 released pursuant to conditions set by the Court. On August 30, 2024, the USPO filed a
 5 final PSR. (ECF 28.) Defendant's sentencing hearing is scheduled for October 7, 2024.

6 II. THE OFFENSE CONDUCT

7 A. Relevant Conduct

8 Starting in January 2018, Kagel (then 79 years old) and his coconspirator, David
 9 Saffron (45 years old), began to fraudulently solicit and accept victims' cash, Bitcoin, and
 10 other cryptocurrency investments in an elaborate Ponzi scheme. All told, Kagel, Saffron,
 11 and their coconspirators defrauded victims of at least \$20,000,000. (PSR at ¶ 23.)
 12 According to Kagel, he has known Saffron since he was a young child, is a long-time friend
 13 of the Saffron family, and has represented Saffron as his attorney since 2001.¹

14 In January 2017, Saffron met with numerous groups of potential investors to
 15 promote his artificial intelligence robot or "AI-Bot." Saffron falsely claimed to have
 16 developed the AI-Bot to conduct automated, high-frequency trading on cryptocurrency
 17 markets across the globe. Saffron told potential investors that his AI-Bot executed 17,500
 18 per hour, could generate profits of up to 600%, was more advanced than IBM's AI
 19 "Watson" (known for winning the TV gameshow Jeopardy), and made profitable trades
 20 76% of the time.² But Saffron did not have an AI-Bot to trade cryptocurrency. He made it
 21 up, and Saffron and Kagel stole the investors' money. Saffron falsely promised that

22
 23 ¹ *CFTC v. Saffron et al.*, 2:19-cv-1697, Dkt. 101-3 at ¶ 10 (D. Nev. Mar. 2, 2021) (Decl. of
 David Kagel).

24 ² *United States v. Saffron*, 2:22-cr-276, Dkt. 1 at ¶¶ 20-26 (C.D. Cal. Jun. 28, 2022) (Initial
 Indictment).

1 potential investors would earn fast, high-yield returns (guaranteed to double one's
2 investment within 30 days) and falsely promised that all investments had zero risk of loss.

3 1. Kagel and Saffron Provided Victims Letters on Law Firm Letterhead
4 Falsely Promising 1,000 Bitcoin Held in Kagel's Escrow Account to
5 Guarantee Against Any Investment Loss

6 Instrumental to Saffron's pitch to induce victim-investors was a false promise that
7 Kagel, as Saffron's attorney, held 1,000 Bitcoin (approximately \$11 million) for Saffron "in
8 escrow." Saffron and Kagel used defendant's position as an attorney to establish a false
9 sense of trust with the victims. Saffron and Kagel misled victims to believe that Kagel held
10 the 1,000 Bitcoin in an attorney escrow account that would "guarantee" victims'
11 investments with Saffron. Saffron and Kagel falsely promised victims that there was zero
12 risk of loss for their investments.

13 To convince victims to invest, Kagel provided victims "escrow" or "guarantee"
14 letters on Kagel's law firm letterhead, which promised to repay victims in the event of loss.
15 (See Exhibit 1, attached hereto.) At the end of Saffron's sales pitch, he often called Kagel on
16 the phone and allowed victims to confirm that Kagel truly had a 1,000 Bitcoin wallet from
17 Saffron. (PSR at ¶ 35.) But the 1,000 Bitcoin wallet was a sham. Kagel provided letters to
18 at least 21 victims between January 7 and January 21, 2018. (See Exhibit 1.) Saffron and
19 Kagel stole each victim's investment.

20 On January 23, 2018, Saffron was arrested in Los Angeles on an outstanding warrant
21 from Georgia for financial fraud related charges. (PSR at ¶ 47.) When Saffron became
22 unreachable, several victims became suspicious of Saffron and Kagel's investment scheme.
23 When confronted, Kagel lied to cover for Saffron to keep the fraud going. Saffron remained
24 in police custody for the next 24 days while he was transported to Atlanta.

1 During Saffron's incarceration, a group of Kagel's victims, who had collectively
2 invested 206.5 Bitcoin (approximately \$3.35 million), hired an attorney to obtain a refund of
3 their investment from the 1,000 Bitcoin that Kagel purportedly held in escrow. (PSR at
4 ¶ 49.) Kagel falsely responded that the victims could not be immediately repaid because
5 Saffron disabled all access to the 1,000 Bitcoin escrow wallet during a robbery attempt.
6 According to Kagel, Saffron disabled the wallet, "*at the risk of his life*," to prevent the
7 assailants from stealing investors' Bitcoin. (See Exhibit 2, attached hereto.) Kagel explained
8 that after the robbery, Saffron was arrested on an unrelated "relatively minor matter," but
9 Kagel assured victims that Saffron would repay all his investors following his release from
10 jail. (*Id.*; PSR at ¶ 51.) Kagel and Saffron's victims never received their investments back.

11 In early February 2018, victims posted negative comments accusing Saffron of
12 stealing Bitcoin on consumer whistleblower websites, including ripoffreport.com. (PSR at
13 ¶ 50.) The online reports threatened the success of Saffron and Kagel's scheme because
14 accusations that Saffron was a fraud could be found through a simple Google search. Thus,
15 on February 23, 2018, Kagel prepared another nearly identical letter purporting to guarantee
16 investors' investments with 1,500 Bitcoin held in escrow. But this time Kagel changed the
17 name of the trader from "David Saffron" to "David Gilbert" to conceal Saffron's true
18 identity from new potential victims. (PSR at ¶ 52.) (See Exhibit 3, attached hereto.)

19 2. Kagel Lied to Victim H.C. to Conceal that Saffron Had Been Arrested for
20 Fraud

21 Victim H.C., who had invested \$200,000, also reached out to Kagel while Saffron
22 was still in jail. Victim H.C. was concerned that she could not reach Saffron to discuss her
23 investment. Kagel lied to victim H.C. He told her that Saffron was unavailable to answer
24 questions about her investment because he had been attacked and was in the hospital

1 recovering. But Kagel knew Saffron was in police custody and not in the hospital. (PSR at
 2 ¶ 48.) After his release, Saffron lied on a Zoom conference call to a group of victim-
 3 investors, including Victim H.C. Saffron told the victims that he had been unreachable in
 4 early February 2018 because he suffered a head injury during a robbery and doctors had to
 5 place him in a “medically induced coma.”³ This was a lie; Saffron had been in jail, not the
 6 hospital.

7 Subsequently, on June 1, 2018, Victim H.C. sued Saffron and Kagel for fraud.⁴ On
 8 August 8, 2018, Saffron and Kagel entered into settlement agreement to pay \$175,000 to
 9 resolve the lawsuit. But Saffron and Kagel negotiated in bad faith and did not pay the
 10 settlement as agreed. Victim H.C. had to file an amended complaint to enforce the
 11 settlement and obtain a default judgment.⁵

12 3. Kagel Continued to Promote the Fraudulent Scheme After He Had been
13 Personnally Sued for Fraud and Kagel Knew that the CFTC was
14 Investigating Saffron for Operating a Ponzi Scheme

15 Between April and December 2018, Saffron laundered more than \$250,000 of
 16 victims’ Bitcoin investments through various intermediaries to Kagel’s IOLTA bank
 17 account, which Kagel knew were proceeds derived from the fraudulent scheme. (PSR at
 18 ¶ 55.) In February 2019, the U.S. Commodity Futures Trading Commission (CFTC) took
 19 Kagel’s testimony in connection with the agency’s investigation of Saffron and Kagel’s
 20 illegal Ponzi scheme. (PSR at ¶ 57.) On March 30, 2019, after providing on-the-record
 21 testimony, Kagel wrote back to the CFTC and claimed that (i) the \$250,000 that he received

22 ³ *United States v. Saffron & Mazzotta*, 2:22-cr-276, Dkt. 101 at ¶ 23 (C.D. Cal. Dec. 7, 2023)
 23 (Superseding Indictment).

24 ⁴ *Charlston, et al., v. Saffron & Kagel*, No. BC 708601 (Cal. Super. Ct. L.A. Cnty. Jun. 1, 2018)
 (Compl.).

25 ⁵ *Charlston, et al., v. Saffron & Kagel*, No. BC 708601 (Cal. Super. Ct. L.A. Cnty. Aug. 29,
 2018) (Amended Compl.).

1 from Saffron was not from victims but repayment for a loan from years ago, (ii) he was
2 “truly shocked” to learn that Saffron was operating a Ponzi scheme, and (iii) he wished to
3 assist the CFTC with its ongoing investigation. (*See Exhibit 4, attached hereto.*) These
4 were all lies.

5 On September 30, 2019, the CFTC charged Saffron by civil complaint with operating
6 a Ponzi scheme in U.S. district court, and on December 6, 2019, the district court ordered
7 that Saffron’s assets be frozen. (PSR at ¶¶ 59-60.) To conceal Saffron’s assets from the
8 CFTC and the district court, Kagel wired nearly \$120,000 between May and July 2020 to a
9 bank account held in the name of a company in which Saffron was an account signatory.
10 The company was owned by Saffron and Kagel’s coconspirator, Vincent Mazzotta. From
11 June to August 2020, Kagel also wired Saffron dozens of payments totaling \$78,000 via
12 peer-to-peer smartphone payment applications. (PSR at ¶¶ 61-63.)

13 Fully aware that Saffron was a fraud and that the CFTC had sued Saffron, Kagel
14 recruited Victim S.B. in July 2020 to invest with Saffron. Kagel falsely claimed that Saffron
15 was a successful cryptocurrency trader who made substantial returns for investors. (PSR at
16 ¶¶ 67-68.) Kagel used his position as Saffron’s attorney to lull Victim S.B. into false sense of
17 trust. Kagel omitted to tell Victim S.B. that Saffron and Kagel had settled a lawsuit for
18 defrauding Victim H.C. or that a California Superior Court for Los Angeles County entered
19 a default judgment against Kagel and Saffron for failing to pay the \$175,000 settlement. *Id.*
20 Similarly, Kagel omitted to tell Victim S.B. that the CFTC had charged Saffron with
21 violations of the Commodity Exchange Act for operating an illegal Ponzi scheme.

22 After Victim S.B. invested the equivalent of \$375,000 with Saffron, he became
23 concerned about Saffron’s honesty and trustworthiness. Kagel again used his position of
24 trust as a lawyer to allay Victim S.B.’s fears and to prevent him from acting on his concerns.

1 From September 2020 through March 2021, Kagel stayed in contact with Victim S.B. and
 2 continued to falsely assure him that Saffron would ultimately pay Victim S.B. back. *Id.*

3 While Kagel continued to lull Victim S.B. from acting on his concerns about Saffron,
 4 Kagel filed a declaration in the CFTC litigation containing numerous false statements. (*See*
 5 Exhibit 5, attached hereto.) For example, Kagel falsely claimed the \$120,000 transferred to
 6 Saffron between May and July 2020 was merely a loan from Kagel to Saffron and not
 7 laundered proceeds of fraud. *Id.* Furthermore, Kagel falsely claimed that he had “never
 8 been involved with” any “aspect of Mr. Saffron’s Bitcoin business, either as a customer,
 9 investor, or any other.” *Id.* But this was not true. Kagel played an integral role in
 10 recruiting and inducing nearly two dozen victims to invest millions of dollars into the Ponzi
 11 scheme in which Saffron played the frontman. Kagel stopped responding to Victim S.B.
 12 after the district court entered a default judgment for the CFTC on March 29, 2021.

13 B. Other Relevant Information for Sentencing⁶

14 Kagel is no stranger to defrauding the public and his clients, which he has done time
 15 and again over the course of his 56-year career as an attorney. In 1994, for example, a
 16 federal district court granted, in part, the U.S. Securities and Exchange Commission’s
 17 motion for summary judgment that Kagel violated the antifraud provisions of the federal
 18 securities laws in connection with a company initial public offering. *SEC v. David Kagel, et*
 19 *al.*, 2:93-cv-855, Dkt. 60 (C.D. Cal. Jan. 31, 1994). The SEC prevailed on the unresolved
 20 charges at trial, and the district court entered a judgment against Kagel permanently
 21 enjoining him from further violations of the antifraud provisions of the federal securities

22
 23 ⁶ Unless otherwise provided by law, there is no limitation placed on the types of information
 24 that the Court may consider concerning the background, character, and conduct of the
 defendant for the purpose of imposing an appropriate sentence. *See* 18 U.S.C. § 3661; *see also* U.S.S.G. § 1B1.4.

laws. (PSR at ¶¶ 94-97.) The California State Bar subsequently suspended Kagel's law license for six months for making materially false statements in a registration statement filed with the SEC and making false representations to SEC investigators to conceal his own actions.⁷

In 2012, the California State Bar suspended Kagel's license again for willfully misusing client funds in his IOLTA account.⁸ Notably, Kagel engaged in similar patterns of money transfers through his IOLTA account as he did with Saffron in 2018, including depositing \$100,000 of non-client funds into his IOLTA account and withdrawing the \$100,000 on the same day. *Id.* The California State Bar finally disbarred Kagel in 2023 for defrauding a client and stealing \$25,000 that Kagel held in escrow on behalf of the client.⁹ (PSR at ¶¶ 130-132.)

III. ADVISORY SENTENCING GUIDELINES CALCULATION

Pursuant to the plea agreement, Kagel pleaded guilty to one count of conspiracy to commit commodity fraud, in violation of 18 U.S.C. § 371 (Count 1). (ECF 22.)

As part of the plea agreement, the parties stipulated the following sentencing factors are applicable to determining the offense level:

- | | | |
|-------|---|-----|
| (i) | a base offense level of 6 pursuant to USSG § 2B1.1(a)(2); | +6 |
| (ii) | a 20-level increase pursuant to USSG § 2B1.1(b)(1)(K) for losses greater than \$9,500,000 but not more than \$25,000,000; and | +20 |
| (iii) | A two-level increase pursuant to USSG § 3B1.3 for abuse of position of trust or use of special skill. | +2 |

⁷ *In the matter of David Kagel*, 94-J-1858 (Cal. State Bar Apr. 1997).

⁸ *In the matter of David Kagel*, 09-O-15403-PEM at pp. 10 (Cal. State Bar Mar. 12, 2012).

⁹ *In the matter of David Kagel*, SBC-22-O-30016 (Cal. State Bar Jan. 24, 2022); *In re David Kagel on Discipline*, S278235 (Cal. S. Ct. Mar. 22, 2023).

1 In addition, the government agrees with the USPO calculation in the PSR that the following
2 sentencing enhancements and adjustments to the offense level are applicable:

- (iv) a six-level increase pursuant to USSG § 2B1.1(b)(2)(C) for an offense that resulted in substantial financial hardship to 25 or more victims; and +6
 - (v) a three-level decrease pursuant to USSG § 3E1.1 for clear demonstration of acceptance of responsibility of the offense and timely entering a plea of guilty. -3

Total Offense Level: 31

IV. SECTION 3553(a) FACTORS

The Court should impose a sentence sufficient, but not greater than necessary, to reflect the purposes of sentencing identified in 18 U.S.C. § 3553(a). *United States v. Rita*, 551 U.S. 338, 348 (2007). Although the Guidelines are not binding, they “reflect a rough approximation of sentences that might achieve section 3553(a)’s objectives.” *Id.* at 350.

Under 18 U.S.C. § 3553(a)(1), the Court should consider the nature and circumstances of the offense and the history and characteristics of the defendant. Furthermore, the Court should consider the need for the sentence imposed to: (i) reflect the seriousness of the offense, (ii) promote respect for the law, (iii) provide just punishment, (iv) afford adequate deterrence, (v) protect the public, and (vi) avoid unwarranted sentence disparities. (18 U.S.C. § 3553(a)(2) and (6).)

V. GOVERNMENT'S SENTENCING RECOMMENDATION

A. The Government Recommends a Sentence of Five Years' Probation with a Condition Home Confinement

Kagel's guideline imprisonment range is 108 months to 135 months and is capped by a 60-month statutory maximum sentence. (PSR at ¶ 141.) Notwithstanding the guideline imprisonment range, the government agrees with the USPO's recommendation for a

1 downward variance and imposition of a non-guideline sentence based on the § 3553(a) factors
 2 discussed below including defendant's age, reported health, and a low likelihood of
 3 recidivism. (PSR at ¶ 166.) According to the PSR, defendant is elderly and infirm both
 4 mentally and physically. He is an 86-year-old man, who is diagnosed with multiple ailments
 5 that would substantially diminish his ability to recidivate. Thus, the government concurs with
 6 the USPO and recommends the Court sentence Kagel to (i) 5 years' probation; (ii) order Kagel
 7 to pay restitution in the amount of \$13,949,435.71; and (iii) order a mandatory special
 8 assessment of \$100.

9 In addition, considering the seriousness of Kagel's crimes in light of the factors under
 10 § 3553(a)(2), the government recommends that, as an alternative to incarceration, the Court
 11 impose as a condition of probation that defendant remain at his place of residence during
 12 nonworking hours (*i.e.*, home confinement). *See* 18 U.S.C. § 3563(b)(19)¹⁰; *see also United States*
 13 *v. Lorenzini*, 71 F.3d 1489, 1491 fn. 1 (9th Cir. 1995) (defendant pleaded guilty to one count
 14 of bank fraud and was sentenced to 5 years' probation that included a condition of home
 15 confinement, supported in part because defendant was not the organizer of the conspiracy
 16 and had legitimate health problems).

17 The government does not recommend that the Court require that compliance be
 18

19¹⁰ Title 18, United States Code, Section 3563(b)(19) states:

20 (b) Discretionary Conditions.—The court may provide, as further conditions
 21 of a sentence of probation, to the extent that such conditions are reasonably
 22 related to the factors set forth in section 3553(a)(1) and (a)(2) and to the extent
 23 that such conditions involve only such deprivations of liberty or property as are
 24 reasonably necessary for the purposes indicated in section 3553(a)(2), that the
 defendant—... (19) remain at his place of residence during nonworking hours
 and, if the court finds it appropriate, that compliance with this condition be
 monitored by telephonic or electronic signaling devices, except that a condition
 under this paragraph may be imposed only as an alternative to incarceration....

1 monitored by telephonic or electronic signaling devices. The government further
2 recommends that the Court's judgment order that defendant be permitted to leave his
3 residence to perform a job or job-related activities (if applicable), to receive medical treatment,
4 to attend religious activities, and for such other reasons pre-approved by the Court or the U.S.
5 Probation Office. *See also, e.g.*, 18 U.S.C. § 3624(g)(2) (an analogous statute listing certain
6 exceptions to the requirement to remain at their residence for prerelease prisoners serving a
7 term of imprisonment under home confinement).

8 B. Relevant Factors

9 Considering the relevant 18 U.S.C. § 3553(a) factors, a below guidelines sentence of
10 5 years' probation with a condition of home confinement as an alternative to incarceration
11 is sufficient, but not greater than necessary, to achieve the goals of sentencing.

12 1. Nature and Circumstances of the Offense and History of the Defendant (18 U.S.C.
13 § 3553(a)(1))

14 The nature and circumstances of the offense, including Kagel's history of fraudulent
15 conduct, weigh in favor of a statutory maximum sentence of 60 months' imprisonment,
16 which is approximately half the advisory guidelines range of 108 to 135 months. As noted
17 by the USPO, "the egregious actions of this defendant should not be minimized or
18 understated" (PSR at ¶ 165.) Kagel personally defrauded at least two dozen victims of
19 millions of dollars. The conspiracy in which Kagel played an integral part impacted many
20 more: at least 177 victims, who have reported losses of more than \$18 million. (PSR at
21 ¶ 70.) Kagel not only defrauded victims of their money, but he robbed them of their ability
22 to trust. Kagel preyed on his victims' willingness to believe that, as an attorney, Kagel
23 would conduct himself with integrity and honesty. By abusing his position of trust, Kagel
24 destroyed many victims' ability to place their trust in others. This is a significant

1 consequence of Kagel's illegal actions, and the Court should not overlook it or minimize its
2 impact.

3 Furthermore, Kagel's involvement in this charged scheme is just the latest in a long
4 line of fraud and dishonesty to serve Kagel's own greed. The record, described above and in
5 the PSR, demonstrates from 1994 onward a recurring pattern of fraud and deceit aimed at
6 picking the pockets of those who trusted Kagel all in the service of lining his own pockets.

2. *Characteristics of the Defendant (18 U.S.C. § 3553(a)(1))*

8 Defendant has no prior criminal convictions, is 86 years old, and has reported to the
9 USPO that he is in ailing health. (*See* PSR at ¶ 164.) Notwithstanding the seriousness of
10 Kagel’s crimes and the other § 3553(a) factors that weigh heavily in favor of a statutory
11 maximum sentence of 60 months’ imprisonment, the government agrees with the USPO
12 that defendant’s age and health alone justify a downward variance and imposition of a non-
13 guideline sentence of five years’ probation. (PSR at ¶ 159.) The government, however, also
14 recommends home confinement as a condition of probation as sufficient, but not greater
15 than necessary, to reflect the purposes of sentencing identified in 18 U.S.C. § 3553(a).

3. Seriousness of the Offense, Respect for the Law, and Just Punishment (18 U.S.C. § 3553(a)(2)(A))

17 As legal jurists of antiquity rightly observed: *culpae poena par esto*. (Let the
18 punishment be equal to the crime.)¹¹ A substantial sentence is needed in this case to reflect
19 the seriousness of the offense, promote respect for the law, and provide just punishment for
20 the offense. As described above, Kagel's conduct was egregious, he continued to personally
21 engage in overt acts in furtherance of the conspiracy for at least four years (from 2018 to
22 2021), and he was personally responsible for inflicting immense financial and emotional

¹¹ LEGAL MAXIMS at 439, Black's Law Dictionary (12th ed. 2024).

1 harm on his victims. Specifically, many victims reported substantial impacts such as: (i) loss
2 of their retirement and life savings, (ii) postponement of retirement, (iii) refinancing homes,
3 (iv) use of credit cards to pay for living expenses, (v) bankruptcy, (vi) an inability to support
4 their children and/or aging parents, (vii) difficulty paying monthly expenses, and
5 (viii) perhaps most devastatingly, damage to their personal relationships and having lost the
6 trust of their partners and loved ones. (PSR at ¶ 74.) Kagel's victims have lost trust in
7 others and themselves; they suffer from anger, anxiety, depression, fear and guilt. *Id.*
8 Several victims also reported suicidal thoughts because of Kagel and Saffron's fraud. The
9 seriousness of the offense is significant. Kagel repeatedly demonstrated his utter disrespect
10 for the law, disrespect for the legal profession, and disrespect for our system of justice. A
11 substantial sentence would be a just and deserving punishment.

12 4. Affording Adequate Deterrence to Crime (18 U.S.C. § 3553(a)(2)(B))

13 There are compelling reasons in this case to impose a significant sentence to provide
14 for general deterrence to others, particularly others in a position of trust, who may consider
15 using their position to defraud their clients or the public. As described above, Kagel lied to
16 potential investors and used his position as an attorney to induce their investments, he lied
17 to the CFTC in the course of its investigation, he negotiated in bad faith to settle victims'
18 claims against him, he lied to a district court in connection with the CFTC's litigation
19 against Saffron, and he continued to recruit new victims and launder Saffron's money while
20 under the scrutiny of the CFTC and the jurisdiction of the district court. Kagel's conduct is
21 egregious and outrageous. Thus, a significant sentence is necessary to send a message, loud
22 and clear, that behavior like Kagel's will not be tolerated in a civil society that values the
23 rule of law.

24

C. Supervised Release, Fine, Restitution, Forfeiture, and Mandatory Special Assessment

The government concurs with the USPO's assessment that defendant is (i) eligible for supervised release of not more than three years; (ii) required to pay restitution in the amount of \$13,949,435.71; and (iii) subject to a mandatory special assessment of \$100. (PSR at ¶¶ 145-150.) The government takes no position on the imposition of a fine and is not presently seeking forfeiture of defendant's assets.

VI. CONCLUSION

For the above reasons, the government respectfully requests that the Court sentence defendant David Kagel as follows: (i) a sentence of 5 years' probation, including a condition of home confinement; (ii) restitution in the amount of \$13,949,435.71; and (iii) a special assessment of \$100.

Respectfully submitted,

GLENN S. LEON
Chief, Fraud Section
Criminal Division, U.S. Department of Justice

/s/ *Theodore M. Kneller*
THEODORE M. KNELLER
Trial Attorney, Fraud Section
Criminal Division, U.S. Department of Justice
D.C. Bar No. 978680
1400 New York Avenue, NW
Washington, DC 20530
Telephone: (202) 514-5799
E-mail: Theodore.Kneller@usdoj.gov

September 30, 2024
Date